IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.656 OF 2006
WITH
CIVIL APPLICATION NO.1252 OF 2007
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Yashodabai Ramachandra Haryan & Ors. ..Appellants.
Vs.
Bhaskar Ratnu Haryan ..Respondent.

Mr.G.S.Godbole, adv. for the Appellants.
Mr.S.M.Raikar, adv. for the Respondent.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 21, 2007.

P.C.:

1. The appellants are original plaintiffs in regular civil suit no.16 of 1998 and defendants in regular civil suit no.22 of 1998, which was filed by the respondent. The appellants claim whole of the property Gat No.1169 while the respondent claims Eastern half of the said land. The trial Court passed a common judgment in both of the suits whereby the defendants in the respective suit are restrained from disturbing peaceful possession of the respective plaintiffs over 1/2 portion of the said Gat No.1169 without specifying which party is in possession of which half of the property. The Appellate Court in Regular Civil Appeal No.210 of 2002 and Regular Civil

Appeal No.211 of 2002 filed by the present appellants observed that in Power of Attorney executed by Ramchandra in favour of Atmaram, he had claimed interest in respect of half of the property and not in respect of whole of the suit land. The Appellate Court further observed that the heirs of Ramchandra, i.e., the present appellants are the owners and in possession of the Eastern half of the suit land, which means the respondent is owner and in possession of Western half of the land. However, it is even contrary to the stand of the respondent, who does not claim possession of the Western half. This has created a lot of confusion. Admittedly, this Court had appointed Superintendent of the District and Sessions Court, Sindhudurg as a commissioner and that commissioner's report has been received. However, that commissioner's report is also not acceptable to the respondent as he had taken certain objections to the same. In view of the objections, commissioner's report can not be read unless the commissioner is made available for the cross-examination. In these circumstances, the learned counsel for both the parties concede that the judgment delivered by both the Courts below may be set aside and both the suits may be remanded back to the trial Court so that the parties may lead further evidence and the commissioner may also be examined giving opportunities of cross-examination to both the parties. It may be

noted that Mr.Godbole the learned counsel for the appellants contends that two findings given by the lower Appellate Court could not be disturbed, one is relating to proof of sale deed in favour of the appellants and another is in respect of the ownership of the respondent Bhaskar. In my opinion when the judgments of both the Courts below are to be set aside, no particular finding can be protected and it is not desirable to remand the matter piecemeal as suggested by Mr.Godbole. However, in my opinion, the appellants shall have opportunity before the trial Court to prove the sale deed and also may challenge the title of the defendants on any portion of the suit property.

2. In the result, both the judgments delivered by both the Courts below in both suits and both appeals are hereby set aside. Suits are remanded back to the trial Court for disposal as per law after giving opportunity to both the parties to lead further evidence if they so desire. The trial Court shall also call Court Commissioner for giving evidence before the Court so that both the parties may have opportunity to cross-examine him.

3. Both the appeals stand disposed off accordingly.

4. Status-quo granted by this Court shall be

maintained till the decision of the suits.

5. As the appeals are disposed off, Civil Application Nos.951 of 2006 and 952 of 2006 do not survive and and stand disposed off accordingly.

[J.H.BHATIA, J.]